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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

**JOHN PETTITT, MURPHY LABRADOR  
CORPORATION, MAX GSD TRUST OF 1996 BY  
BARBARA MUSSER, TRUSTEE,**

Plaintiffs,

v.

**JOHN CHIANG, individually and in his capacity as  
STATE CONTROLLER OF THE STATE OF  
CALIFORNIA,**

Defendant.

CV 07-5854 CW

**NOTICE OF MOTION AND  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT  
(Fed. R. Civ. P. 12(b)(6))**

Hearing: April 24, 2008  
Time: 2 p.m.  
Department: 2, Fourth Floor  
Judge: The Honorable  
Claudia Wilken

To Plaintiffs John Pettitt, Murphy Labrador Corporation and Max GSD Trust of 1996 by Barbara Musser, Trustee, PLEASE TAKE NOTICE THAT on April 24, 2008 at 2 p.m. in Department 2, Fourth Floor, 1301 Clay Street, Oakland, California, Defendant John Chiang, individually and in his capacity as the Controller of the State of California, will and does move this Court for an order dismissing the First Amended Complaint in this action. This motion is based upon the pleadings and papers on file in this action, this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in Support of Motion, and whatever

1 evidence and argument is presented at the hearing of this motion.

2 The grounds for the motion are that the complaint contains claims which are untimely  
3 or are barred by the Eleventh Amendment.

4 Dated: March 7, 2008

5 Respectfully submitted,

6 EDMUND G. BROWN JR.  
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7 CHRISTOPHER E. KRUEGER  
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10 /s/ Ross C. Moody

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